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ALEXANDER L. STEVAS,
CLERK

No. 84-1432

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

WILLIAM J. MARTIN,
Petitioner,

v.

DIGHT W. CRAIN, et al.,
Respondents.

On Petition for a Writ of
Certiorari to the Supreme
Judicial Court for the
Commonwealth of Massachusetts

MOTION TO INTERVENE

Francis X. Bellotti, the Attorney General of the Commonwealth of Massachusetts, moves, pursuant to 28. U.S.C. § 2403(b) and Rule 28.4(c) of the Rules of this Court,[1] to intervene in the above-captioned case, in which a petition for a writ of certiorari is presently pending before this Court. As grounds for this motion, the Attorney General states that the petition for certiorari calls into question the constitutionality of Mass. Gen. Laws Ann. c. 71, § 42D, a state statute affecting the public interest.

The Attorney General did not intervene in the state trial court because the question of the constitutionality of the statute was not raised by the parties, and the Attorney General therefore was not notified of the pendency of the case. See Mass. Gen. Laws Ann. c. 231A, § 8; Mass. R. Civ. P. 24(d). After the trial court, sua sponte, held unconstitutional a portion of Mass. Gen. Laws Ann. c. 71, § 42D, the Attorney General participated as amicus curiae in the Supreme Judicial Court of the Commonwealth in support of the constitutionality of the statute.

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[1] The petitioner served the petition on the Attorney General, as required by Rule 28.4(c), but failed to recite in the petition that 28 U.S.C. § 2403(b) may be applicable, as further required by that rule.

As chief law officer of the Commonwealth, the Attorney General's interest in this case is to uphold the facial constitutionality of chapter 71, section 42D, of the General Laws of the Commonwealth. That interest is not adequately reqpresented by the respondents, who are primarily interested in defending the constitutionality of the statute as applied in this case.

Respectfully sbumitted,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

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Dated: March 12, 1985